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Tech Support: Please stand by for real-time captions.

Hello, this is Wayne. Type something if you can hear me?

Thank you very much.

Moderator: Good afternoon everyone welcome to the OFCCP Webinar on the Proposed Section 503 regulations. We appreciate you joining us today and we have quite a large audience. We will be taking questions at the end of today's session. Our presentation is by Naomi Levin who is our Branch Chief for the Policy Development and Procedures Branch. She has quite a bit of information to present to you today. So, I will pass the microphone over to Naomi and have you submit your questions online and we will get to as many as we can once she concludes the presentation.

Presenter: Thank you. Welcome everybody. Before I started an apology up front for the frog you'll hear in my throat coming and going occasionally. I will do my best to keep it under control. Also, I know some of you are out there following on downloaded slides and listening on audio. You will certainly hear me saying next or next slide, so you will know if you're following along when I move onto the next slide

Presenter: With that, as Brenda mentioned to you, I am delighted to talk to you today about our Notice of Proposed Rulemaking that was published on December 9th of what is now last year. In this session, I will discuss and kind of go through with you the highlights of the proposed changes to the Section 503 regulations. I'll also explain a little bit about the comment process and where we go from here, what happens next. While I will hit the highlights of the proposed rule in this session, you can find additional information about the NPRM on the OFCCP website at www.dol.gov/OFCCP. We have set up a special page with a link to the NPRM, some frequently asked questions about the proposed rule and a NPRM fact sheet. You will find it under the highlight section on our webpage on the top left of the OFCCP homepage.

Presenter: Or, if you are right-handed, you can find it on the right-hand side under the heading, "Latest News and Events" at the top of the page on the home page on the right side. Next Please.

Presenter: Okay. I wanted to just take a minute, because we have a lot of different kind of people out there, and some people read NPRMs or Notice of Proposed Rulemakings all the time and other people may not be that familiar. So, I want to take just a second before we talk about the details and make sure everybody knows what a Notice of Proposed Rulemaking is. Of course, Notice of Proposed Rulemaking, or a NPRM is the governments' way of providing the public with formal notice that it is proposing a new regulation or that it is modifying an existing regulation. The NPRM published by us on December 9th is OFCCP's way of telling you that we are proposing revisions to our regulations that implement Section 503 of the Rehabilitation Act of 1973. And those rules are currently in the code of Federal Regulations at volume 41 part 60 --

741. The Section 503 as most of you probably know prohibits employment discrimination on the basis of disability by federal government contractors and subcontractors.

Presenter: Section 503 also requires that covered federal contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals with disabilities. One more word about the NPRM, if you go to read it and you haven't read an NPRM before, the NPRM is kind of in three different sections. The first section has background information and that's the Preamble and it explains all of the different things we are proposing. What we are proposing to revise and why we are proposing the changes we are proposing.

Presenter: The second section, in the middle, is called regulatory procedures. It addresses some requirements we have to meet, different laws we have to make statements about and apply and it also discusses the amount of time that we believe complying with our proposals will take and what we believe the cost of that compliance will be.

Presenter: Finally, the last section, after you see the Directors' name, is the actual text of the regulations as they would read if they are revised in the way we are proposing. Okay.

Presenter: So, why are we doing this? Why are we revising the regulations? The framework articulating contractor Section 503 responsibilities has not changed since the implementing regulations were first published in the late 1970s. It has been quite some time.

Presenter: Added to that, recent Bureau of Labor Statistics data show stark employment disparities between the working age individuals with disabilities and their counterparts-without disabilities. Approximately 79% of those with disabilities are outside of the labor force altogether. That compares to approximately 30% of the counterparts without disabilities.

Presenter: Although some individuals with disabilities may not be in the labor force because they are unable to work or for any variety of reasons they choose not to work that is not the case for the clear majority of individuals with disabilities who have repeatedly said in studies, that they want to work, but they are out of the labor force because they have been unable to find jobs and have become frustrated and have given up trying. The unemployment rate for individuals with disabilities is also significantly higher than those without disabilities, about 1.5 times higher than the unemployment rate for those without disabilities. The unemployment rate, as you know, refers to those in the working age populations who are actively looking for work, but are unable to find work.

Presenter: This tells us the existing 503 regulatory framework has not been doing what it is intended to do. Strengthening our requirement as we propose is an important step in addressing the problem and increasing employment opportunities for individuals with disabilities.

Presenter: The NPRM is also intended to address another problem. The current regulations contain a fair amount of vague language that has caused a lot of confusion for contractors as what they are really required to do and when they are required to do it. For example, the current regulations use words like "should," and phrases like "periodic review." The NPRM proposes to replace that kind of language with words such as "shall" and "must" to clearly identify which

actions are mandatory and to specify the time period for the conduct of required reviews. Clarifying the language of the regulation, we believe will foster consistency and compliance by contractors and will also make us more efficient when OFCCP is conducting compliance evaluations.

Presenter: This slide and the next one provide a general overview of some of the proposed substantive changes to the Section 503 regulations. Each listed proposed change will be explained in a little more detail as I go along. But we wanted to just expose you and let you know generally what they are. So, among the substantive changes we proposed are incorporating changes that are necessitated by the ADA and Amendment Act of 2008. We propose to require annual review of personnel processes by contractors. We propose to require outreach and recruitment measures. And we also propose to mandate job listing requirements. Next slide. In addition we propose to modify the individual invitation to self-identify to require written accommodation procedures, require increase data collection. Next slide.

Presenter: We propose to incorporate the changes of the ADAAA into our rule. The proposals we are making are consistent with the changes that EEOC made to its regulations to integrate the ADAAA back in March. There will be one set. Everybody will know what it is. There will be one set of standards on the non-discrimination side. If you want to know more about the ADAAA, we have additional information on our website including a link to the text of the statute. We have some frequently asked questions about the key changes the statute made and also a link to the EEOC's webpage, if you would like to poke around their site or read their regulations. Next slide.

Presenter: First item is the annual review of personnel processes. The proposed revisions mandates certain specific steps that contractors must take at a minimum to review their personnel processes. These specific steps are those that you would currently find as recommended in Appendix C to the 503 regulations. Appendix C currently suggests that the contractor identify the vacancies in training programs for which applicants and employees with disabilities are considered, provide a statement of reasons explaining the circumstances for rejecting individuals with disabilities for vacancies in training programs and include a description of considered accommodations. And, describe the nature and type of accommodations for individuals with disabilities who were selected for hire, promotion, and training programs. In other words, what accommodations you are providing. The proposed rule requires a contractor review their personnel process on at least an annual basis to ensure that its obligations are being met and that the review and its results are documented. The current rule requires such a review periodically. OFCCP's enforcement efforts have found that most contractors were simply not following those steps. And that the documentation maintained by contractors that did take these steps was generally not sufficient for us to conduct a meaningful review or even for contractors to use that information to conduct a meaningful review. Similarly, NPRM proposes that contractors be required to adhere to a schedule for the annual review of all physical and mental job qualification standards to ensure that to the extent these standards screen out individuals on the basis disability, they are job related for the position in question and consistent with business necessity. The NPRM proposes that the contractor documents the methods they use in their review. The results of that review itself, any actions that they take in response to what they learn from that review.

Presenter: Our current regulations merely suggest a number of outreach and recruitment efforts contractors can take to increase employment opportunities for individuals with disabilities. In contrast, the NPRM proposes requiring contractors to engage in certain outreach and recruitment activities. These proposed required activities represent a minimum. Contractors are welcome to engage in additional outreach and recruitment activities and in the NPRM we have even included a list of some suggested additional activities that contractors may want to take. With respect to the proposed mandatory outreach and recruitment efforts first, the NPRM proposes that contractors be required to list their job openings with the local employment delivery services or One Stops, just as they are required to do on behalf of veterans by the Vietnam Era Veterans Readjustment Assistance Act, better known to most as VEVRAA. The NPRM job listing proposal includes changes we had proposed in our recent VEVRAA NPRM, namely that contractors provide job listing information in the format and manner that the particular One Stop needs. The contractor identifies itself as a federal contractor and provides contact information for the hiring official and request priority referrals.

Presenter: The NPRM also requires the contractor to enter into a minimum of three linkage agreements with agencies and organizations for purposes of recruitment assistance or, for the development of training opportunities. Of these three agreements, one agreement is to be with the local state Vocational Rehabilitation agency office nearest the contractor's establishment or, with a local organization listed on the Social Security Administration Ticket to Work employment network directory. The second agreement is to be with any one of several other listed organizations or types of organizations such as the Employer Assistance and Resource Network or EARN that is funded by the Department of Labor or with a local disability group near you or with a career office of an educational institution, or, with an employment or placement organization that works with or specializes in working with people with disabilities. And, the third of these agreements is to be with a disabled veteran service organization listed in the National Resource Directory, which you can easily find on the Internet. The NPRM also proposes requiring contractors to annually review their outreach and recruitment efforts to evaluate their effectiveness and to document their evaluation including what criteria they use to evaluate the effectiveness of their efforts and the contractors conclusion as to which of its efforts were effective.

Presenter: Under the NPRM, if the contractor concludes that the totalities of its efforts were not effective, then it must identify and implement alternative efforts to recruit qualified individuals with disabilities. Lastly, the NPRM provides that the outreach and recruitment records be kept for five years rather than the customary one or two years. This allows contractors and OFCCP to evaluate the effectiveness of recurrent efforts over time, to refine those efforts as they are needed or as circumstances change. It also allows for trend analysis to be conducted by either the contractor or OFCCP.

Presenter: The proposed rule proposes that the contractor be required to invite individuals to voluntarily self identify as an individual with a disability at both the pre-offer stage and add the post offer stage of the hiring process. The proposed rule also adds a new requirement for contractors to annually survey their employees, which provides an opportunity for each employee who is or who subsequently could become an individual with a disability to be able to

voluntarily self identify. These changes are proposed in order to collect important data pertaining to the participation of individuals with disabilities in the applicant pools and work forces of contractors that very simply does not currently exist at all. This data will assist OFCCP and will assist contractors in identifying remaining barriers to the employment of individuals with disabilities and hiring practices or personnel processes. It will also better enable OFCCP and contractors to assess the effectiveness of the contractor's recruitment efforts over time and to refine and improve recruitment strategies where necessary. At the pre-offer stage, the proposed rule requires the contractor to give all applicants a chance to voluntarily self identify as individual with disabilities whenever the applicant applies for or is considered for employment. This requirement is consistent with the ADA's restrictions on pre-employment disability related inquiries. We get this inquiry a lot. Although the ADA generally prohibits inquiries about disability prior to an offer of employment, it does not prohibit the collection of this information by a contractor in furtherance of his Section 503 affirmative action obligation. It is important to note that the disability related information that can be collected for this purpose is very limited. The invitation asks only for self identification as to the existence of a disability. It does not seek information as to the nature and type of disability an individual has. Or, as to the nature or severity of any limitation the individual has that result from that disability. Moreover, to help ensure the confidentiality of any disability related information, the proposed rule requires that the invitation to self identify be separable or detachable from other application materials. The NPRM also proposes that OFCCP mandates specific text that the contractor will be required to use when inviting applicants to voluntarily self identify as having a disability.

Presenter: This requirement will ensure consistency in all invitations that are made. In addition, mandating specific text will minimize any burden to contractors resulting from compliance since they will not have to be developing their own, suitable, self identification invitation on an individual basis. In turn, we believe that will facilitate contractor compliance with this proposed revision of the rule. We also believe, that by mandating specific text of the invitation, we will help reassure individuals with disabilities who may be reluctant to self identify of the legitimacy and the limited nature of the inquiry that they are being asked and in turn, that will hopefully foster voluntary self identification. In addition to requiring pre-offer invitation to self identify, the proposed rule retains, but modifies the current regulations requirement that contractors invite individuals to self identify after an offer of employment has been extended, but before the applicant begins their job duty. We propose to retain this requirement so that individuals with hidden disabilities, who fear potential discrimination if the disability is revealed prior to receiving a job offer, will nevertheless have an opportunity to provide this valuable data to us and to contractors. Lastly, the proposed rule requires that on an annual basis, the contractor shall anonymously survey all of its employees using the post offer self identification text. Because an employee may become disabled at any time, surveying all employees annually will ensure that the most accurate data possible is available to assist contractors and OFCCP in evaluating and refining contractors' affirmative action efforts.

Next slide. Okay. The NPRM proposes an establishment of a national utilization goal. This section of the proposed rule is certainly totally brand-new. It proposes to establish a single national utilization goal of 7% for individuals with disabilities for each job group in the contractors' work force.

Presenter: Contractors will use the job groups they have established to comply with Executive Order 11246, which provides for equal employment and affirmative action with women and minorities for this purpose. It is important to understand that the goal we are proposing in the NPRM is neither a hiring quota nor a restricted hiring ceiling. Rather, the goal is an aspirational equal employment opportunity objective and an important tool for measuring contractors' progress toward equal employment opportunity. I want to be clear that it does not violate the law for a contractor not to meet the goal. However, failure to meet the goal is basically a red flag. It may be an indicator that there are deficiencies elsewhere in the contractors' recruitment or personnel practices that are causing a problem. The establishment of a utilization goal for individuals with disabilities is new, but we believe it is warranted in light of long term and intractable nature of the severe employment disparity between those with and without disabilities that I talked about at the beginning of this program. The 7% figure we have proposed is based on the limited labor force and discouraged worker data regarding individuals with disabilities contained in the 2010 American Community Survey or ACS. For those of you unfamiliar with ACS, ACS is part of the decennial census.

Presenter: It's not a part of the census that goes out every ten years. It's in the more detail part based on sampling data. They survey a few thousand people around the country on a monthly basis. The ACS regarding disability asks six questions. They are basically functional questions. Whether you are blind or deaf, whether you have a serious difficulty walking or climbing stairs or whether you have difficulty bathing or dressing. However, taken together, the six ACS questions encompassed a much narrower definition of disability than the one that is in the ADAAA or Rehabilitation Act. However, the more broad Rehabilitation Act definition is the one that contractors will be using when applying the proposed goal to their workforce.

Presenter: For example, so you can get a better sense between the two definitions, the ACS questions do not mention mitigating measures at all. Someone with a condition controlled by medication might not indicate on the ACS that they have a disability, although they have one as defined under Section 503. Similarly, ACS may not capture someone with a disability such as cancer that is in remission or somebody with a disability such as epilepsy which is periodic in nature.

Presenter: Clearly, the ACS data we have is not perfect data but it's the best source of disability work force data we know of. To arrive at the goal, an average of the ACS civilian labor force data for individuals with disabilities was approximately 5.7%. To that number, we added a figure based on the ACS data regarding individuals with disabilities who are discouraged workers. That is how we arrived at the 7% number. OFCCP felt it was important to this and include a number representing discouraged workers because of the extremely high number of discouraged workers in the working age population who have disabilities. Discouraged workers are, again, people I mentioned to you at the beginning who want to work, who look for work, but who have become so frustrated that they actually stopped looking for work. In essence, they become discouraged from looking for further work. Those are discouraged workers.

Presenter: Lastly, in the Preamble, related to the goal, we also asked for comment on the idea of including a sub goal for targeted disabilities. The targeted disabilities element would be based on

the federal sector list of targeted disabilities. We also asked for comment on the Preamble for a range of goal values between 4% and 10%. Next slide.

Presenter: OFCCP also proposes in the NPRM that the contractor develop and implement written procedures regarding the processing of reasonable accommodations request. This proposal is similar to the federal sector requirements that were established by Executive Order some years ago and it requires that each federal agency develop and implement written reasonable accommodation procedures. A number of large companies already do this, and in fact, those large companies serve as a model for the federal sector requirement. The NPRM Proposal would require that the reasonable accommodation procedures be included in the affirmative action program and that it would contain a number of specific elements that we prescribed. These elements include how to request reasonable accommodation, written confirmation of reasonable accommodation requests to be provided for people, set a timeframe for the processing of reasonable requests. Time and again, people say “it seems like a long time, I don’t know when to expect my accommodations.” This would address that. The reasonable accommodation procedures should also specify when medical documentation should be sought. What are the circumstances where it is appropriate to request medical documentation? That should be set out so everybody knows. Employees know. Applicants know. And those making the accommodation know. The accommodation procedures would also provide for denials of the reasonable accommodation requests to be in writing.

Presenter: And those written denials would include the reason for the denial. Why am I not getting an accommodation? Why or is there another accommodation I could have instead? And, the accommodation procedures must name a specific official who has the overall responsibility for administering the reasonable accommodation procedures with contact information. So if there's a question about the procedure, there is somebody who can be contacted and is expected to know the answer and provides the information.

Presenter: The NPRM also proposes that contractors collect and retain additional data regarding the composition of their applicant pool and hires. The evidence behind this new section is that there is currently no structured data regarding the number of individuals with disabilities in the applicant pool or workforce. This absence of data makes it nearly impossible for the contractor and OFCCP to evaluate the availability of individuals with disabilities in the workforce or to make any quantitative assessments of how effective contractor outreach and recruitment efforts have been in attracting candidates with disabilities. Accordingly, the proposed rule requires that the contractor document and update annually the following kinds of calculations. For applicant data: the total number of applicants for employment, the number of applicants who are known to be individuals with disabilities and the applicant ratio of known disabled applicants to total applicants. For hiring data, similarly, the total number of job openings, the number of jobs filled, the number of known individuals with disabilities hired, and the hiring ratio of hires with known disabilities to total hires. And, the total number of job openings, the number of jobs that are filled and the job filled ratio of job openings to jobs filled. These basic measurements will provide the contractor and OFCCP with important information that does not currently exist. This will aid the contractor in evaluating and tailoring its recruitment and other affirmative action strategies and is a crucial part of the proposed assessment of contractors’ outreach and recruitment efforts. It will also be helpful in identifying whether any barriers remain to the employment of individuals with

disabilities and, if so, where those barriers might be. For example does there seem to be a problem at the recruitment stage or is the problem later in the hiring process?

Presenter: The computations proposed in this NPRM should not present an onerous burden for contractors. Although, the measurement specific to disability are new requirements, the non-disability specific data such as the total number of applicants and the total number of job openings and a jobs filled is information that contractors are already required to maintain by other laws enforced by OFCCP.

Presenter: In the NPRM, we also propose a couple of significant revisions to the compliance evaluation procedures that OFCCP uses when it audits a contractor. First, the NPRM proposes that contractors provide records in any available format that OFCCP requests. Under this proposal, OFCCP would not require that the records be kept in a particular format, but request a list of formats that records are already in and then choose from that list the format that we would like those records in.

Presenter: The NPRM also proposes to allow access to records for compliance checks or focused reviews on site or off-site at OFCCP's discretion. And, lastly, the NPRM, adds a pre-award compliance evaluation procedures that is not currently in the regulation, this will make Section 503 consistent with an important requirement that already exists under Executive Order 11246 that applies to equal employment opportunity for minorities and women.

That concludes my summary of the key proposals.

Now I want to touch on a couple of Frequently Asked Questions about the NPRM and the comment process. First, how do I submit comments? Well, most commonly, comments are submitted to us electronically by accessing the Federal eRulemaking portal called www.regulations.gov. You will use the RIN number, 1250-AA02. You can put that number where it says keyword, or, you can provide us with comments the old-fashioned way. They can be mailed or hand delivered or even couriered to Debra A. Carr, who is my boss, the Director of DPPP at the Office of Federal Contract Compliance Programs, Room C-3325. Our address is 200 Constitution Avenue, Northwest, Washington, DC. The zip is 20210.

Presenter: You can also fax comments to us, but we only take faxed comments of six pages or less at 202-693-1304. That is not a toll free number.

Presenter: Does OFCCP acknowledge receipt of comments? Well, generally not. You may request confirmation by giving us a call at 202-693-0103. If you are using a voice phone dial 202-693-1337, if you are using TTY or text cell phone. All comments are posted and may be reviewed on www.regulations.gov. It usually takes two or three days, but for most cases, you can see for yourself if your comment has been received. [Next slide].

Presenter: What do we do with all those comments? Those comments are very important to us. We use them. We review them. We analyze every single comment we receive. What you provide to us assists us in developing our final rule. We read them. We welcome your ideas and questions. And, when we issue a final rule that will mean that there have been permanent

changes made to the regulation. The final rule is the last step in this process that will permanently change the Section 503 regulations to whatever the final rule says. [Next Slide].

Presenter: Very important. When is the deadline for submitting comments? The public comment period is 60 days. That means that we must receive your comments on or before February 7, 2012.
[Next Slide].

Presenter: That brings us to the question period. Let me turn it back over to Brenda who will explain.

Moderator: Naomi, we will give you a few minutes to rest your voice and address some of the questions that come through on the chat box. If you did not submit a question, you can do so now. They are with us as we go through some of these questions to be able to select which ones that we can address. First, we are talking about the timeline. What is the timeline anticipated before a final rule is to be produced? What is the timeline for it to take effect once it is finalized?

Presenter: Okay. As you might imagine, it is a lengthy process. Rules go through a lot of review. They need to be drafted. They are coordinated with sister agencies. We make sure things are not inconsistent with other agencies. We get input from our sister agencies. They also must be reviewed by the Office of Management and Budget, which, can also be a lengthy process. But, I think our goal here is to have them out by the Fall of this year. That is what we are looking at. Look for them for the Fall of 2012.

Moderator: Thank you Naomi. Next question. The data collection. Is this data collection of ratios calculated on an overall basis or based on job group?

Presenter: The job ratios would be calculated by job group - also, as well by the whole entity. We are trying to get as much information as we can to be able to see what is really going on in workplaces and get as much data as we can that is similar to the way data is currently obtained now under Executive Order 11246.

Moderator: Next Question. What does the worker do if they feel after asking for reasonable accommodation, the employer acts with retaliatory actions, such as demotion, lowering pay and prior to requesting, everything was okay?

Presenter: First, one of the reasons we are proposing the procedures is to minimize the amount of times when there are misunderstandings and problems arising when requests are made and when people don't know what the process is, or what the timeframe is and employers may not know what the expectations are as to when they are supposed to take care of the request, or what priority to give it. By having a set of procedures spelled out, we hope that everybody knows what the expectations are and how the process is to work. And, that will minimize problems occurring in the reasonable accommodation process. However, if somebody requests a reasonable accommodation and then finds they are retaliated against because they are suddenly demoted or, suddenly their performance, which has remained unchanged and always been fine, is suddenly unacceptable, that is a violation of the law. Retaliation is against the law. Retaliation would be

against the law if the person requesting accommodation didn't have a disability and wasn't entitled to accommodation. So, retaliation for asserting any right under the law is a separate violation of the law and that can be handled as a complaint of discrimination.

Moderator: And while we are talking about requesting accommodations, does each request have to be included in the –AAP or is it just procedure for managing this request?

Presenter: Right. What goes in the AAP are the procedures, so we can see what the procedures are that the contractor is working with. There is no reason for all the particular requests to be in the AAP itself.

Moderator: Now, do the new regulations make a distinction like Executive Order 11246 regulations do between construction and non-construction contractors?

Moderator: Under the current VEVRAA and Section 503 regulations, construction and non-construction contractors alike must develop an AAP; however there is no current record-keeping requirement for contractors that are construction contractors. Excuse me, construction contractors under VEVRAA and 503.

Presenter: The Section 503 rules have always applied to construction contractors and it will continue to be the case under the NPRM.

Moderator: How can a contractor avoid disability discrimination claims by requesting post offer if an applicant or an employee has a disability? Although the contractor may not ask specific questions about the disability, can you provide a specific example of the type of question a contractor may ask to get this information?

Presenter: We will under the NPRM, OFCCP will provide the text of the invitation to voluntarily self identify. The contractor would not have to worry about saying the wrong thing because we would be providing that language to them. But, inviting somebody to self identify, consistent with our role, is not a violation of the law now and would certainly not be a violation of the law then. A large purpose of having a voluntary self identification is to have data to know who is in the applicant pool, who is in the workforce, and to be able to determine what is happening with people in the workforce. Has there been progress made toward equal employment opportunity? You really cannot determine those things if you do not have information. It will also help determine where there may be workplace barriers by knowing where people are in the process. But, in inviting someone to self identify pursuant to our rules is not going to earn somebody liability. It will not violate the Rule or violate the law.

Moderator: Next question - Do you see these rules applying to other companies, no to just OFCCP contractors? If so, will it happen in 2012? Particularly in the past, tracking race and gender started with OFCCP contractors and then the same rules were applied to other companies?

Presenter: OFCCP only has jurisdiction over federal contractors. So, it is certainly beyond our jurisdiction to either apply the rules to other than federal contractors or to determine in some way

that they should somehow be applied to other companies. Companies may engage in various forms of affirmative action on their own, but OFCCP has no jurisdiction. We could not possibly apply the NPRM rules to companies that are not federal contractors covered by those affirmative action rules.

Moderator: We have a question about the resource directory. Last time they checked, it was offline being revised. What is the status of that currently?

Presenter: I believe that revision is coming along and you should see it back online soon.

Moderator: I believe it should be posted now.

Presenter: Oh really – well check our website we've been updating our website. It's there?

Moderator: Yes.

Presenter: Great!

Presenter: It has been a long time coming.

Moderator: Okay. Still going through the questions as they are coming through.

Moderator: We have a question asking how contractors are going to know if they have to comply. Is notification going to be sent to all government contractors? If so, in what way?

Presenter: Well, there are specific thresholds. In general, one's contract should indicate that you are a federal contractor. Contractors with a contract of \$10,000 or more are generally subject to the Section 503 requirements of nondiscrimination and affirmative action. Contractors with 50 employees or more in the company and a contract of at least \$50,000 are subject to the – requirements of the affirmative action program that we have been discussing in great detail. So, the goal requirement and the other requirement about accommodation procedures and what-not would apply to those contractors with at least 50 employees in the company and a contract of at least \$50,000.

Moderator: Some jobs require a lot of physical labor, effectively limiting large groups of disabled and for that matter, nondisabled people from applying. Are there going to be any allowances for such positions to meet that 7% goal?

Presenter: The fact is nobody needs to hire somebody that is not qualified to do a particular job. However, there are many different kinds of disabilities and many different types of skill levels. There is no reason to believe that the 7% number would be particularly problematic for one occupation or another. For people with disabilities as described in the ADAAA, as I indicated to you, simply not meeting the goal would not by itself constitute a violation of the law. But, you need to take a hard look at what you're doing and what your practices are to see if you need to do other practices or if there are other problems. But, I certainly have no expectations that any particular job would have a difficulty meeting that goal by hiring qualified people.

Moderator: Thank you. We have several questions that have come in asking about a copy of a transcript. We are compiling a transcript. If you send me an e-mail, and I will give you my e-mail address - it is williamsstewart.brenda@gov. I will ensure you get a copy of that transcript. It

is our goal to also have the audio recording posted on our website. That will be made available to everyone. If you would be patient and give us a few days for that to be posted. Check back on Friday or Monday at the latest, we should have the audio portion posted on the website. You can always e-mail me and I will get the closed captioned transcripts to you.

One question we have is about job group and job category. Are they the same?

Presenter: No. By job category, I always think about the EEO-1 categories, which is much broader. That is like manager and professional and administrative personnel. Job groups are typically more narrow. They are a handful of jobs that are similar to each other - a couple of jobs, three or four jobs that are similar to each other. That is much narrower than a job category. The goal would apply to each job group, so that there is really not an opportunity for segregation or hiring people only in limited places in a company and saying the goal has been met. So, if you look at the workforce as a whole, job groups are significantly narrower than job categories..

Moderator: Okay. Could you also address post traumatic stress disorder as a possible disability? And, if it is considered one, is there a percentage level that must exist in order to qualify?

Presenter: To qualify as having PTSD? I am certainly not a diagnostician and PTSD is a diagnosis. PTSD, generally speaking, under the ADAAA standards, is more than likely to be a disability. It is difficult for me to imagine that PTSD could not be. So yes, while it is case by case, PTSD is one of those things that almost always would be a disability under the ADAAA and the Rehabilitation Act.

Moderator: Thank you. If an applicant self discloses a disability, is the employer supposed to verify the applicant's disability by requesting documentation?

Presenter: No. Voluntary self-identification is certainly not the same thing as requesting reasonable accommodation for a hidden disability. So, no this is a voluntary self-identification by people. Our experience has not been that people tend to erroneously be claiming a disability they do not have. No, this is a voluntary self identification by applicants and employees.

Moderator: Once the new guidelines are in place, which is anticipated in the Fall, will compliance be required immediately, or is there a period of time? Sometimes these things require IT updating to gather some of the information, which of course takes time.

Presenter: The effective date of regulations is usually 30 or 60 days out. I think it is 60 days after they are issued. So, more than likely, I certainly can't speak definitively right now - in general, regulations typically have an effective date of 60 days from the date they are issued unless there is a specific reason to have it be longer or shorter.

Moderator: We are still taking questions. If you would like to submit something, I sent out my e-mail address to all of you so that you can use that to request a copy of the transcript. Sure enough, I have already received a few requests. If you have any more questions, now is the time to submit them.

Moderator: How do we put so much emphasis on recruiting and hiring one group of individuals without unintentionally discriminating against other groups? It seems as though this ruling would cause us to show favoritism to one group over another.

Presenter: The idea is to outreach and recruit. Certainly, outreach and recruitment to a group does not preclude or damage in any way or harm recruitment or outreach to every other group. It is just making sure people are included. Disability in particular happens to go across all groups, whether it is race or gender or ethnicity. Basically it is about having a big tent and welcoming everybody into that tent.

Moderator: Okay. We have a few more questions we will try to get to. I think that is pretty much everything that has come in without being repetitive. We have a couple more questions that have just come in.

Moderator: The ADAAA is pretty broad in considering someone disabled without considering any mitigating devices they may use. For the new regulations, would somebody who is hard of hearing, but can hear with a hearing aid, need to self-identify as disabled and be counted as such?

Presenter: I don't know about "need" to self identify. Somebody, who without a hearing aid would be significantly limited in the ability to hear, is somebody with a disability under the statute. That would be somebody we would hope self identifies, but again, there is no requirement that the person self-identify, but certainly, absolutely, that is somebody who has satisfied the definition and would have an impairment that substantially limits a major life activity under the ADA and the Rehabilitation Act.

Moderator: They are also asking, will efforts be made to educate the public on who is disabled so that they can properly self identify?

Presenter: I am sure that is the case. There will be lots of education in all types of forms, including information on our website to educate everybody. Of course, there is also information for educational purposes on the definition of disability on the EEOC website as well. This is not the end of education efforts. This is just to educate people on the proposed rule. There will be more to follow once there is a final rule.

Moderator: Okay. We have gone through all of our questions. We appreciate those that have come through. We appreciate the time you have given us today. I am sure Naomi is worn out. This is the third public webinar we have done on Section 503. We responded to your requests. It has been very much in demand. We appreciate it.

Moderator: Again, for a copy of the transcript, send me an e-mail at williamsstewart.brenda@dol.gov.

Moderator: The audio recording will be on our website at some point between now and probably Friday or Monday. We would also like to encourage, those that have not done so to subscribe to the e-mail updates on the DOL website. That way you can stay up to date with whatever we are

doing that may keep you informed. So, subscribe to the e-mail updates. Again, we thank everyone for tuning in. Thank you for your interest. Have a great day.

[Event Concluded]